Supreme Court, U.S.
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No. 79-1728

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1979

HOT SPRINGS COUNTY SCHOOL DISTRICT
NUMBER ONE, et al.,

Petitioners,

vs.

WASHAKIE COUNTY SCHOOL DISTRICT
NUMBER ONE, et al.,

Respondents.

PETITION FOR WRIT OF
CERTIORARI
To The Supreme Court of the
State of Wyoming

REPLY BRIEF OF PETITIONERS

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Table of Cases

English vs. City of Long Beach,

(Cal.) 217 P.2d 22, 24. 4

In The Matter Of State Bank Charter Application Of The Security Bank,

606 P.2d 296, 300 3

Morgan vs. U.S.,

298 U.S. 468, 56 Sup. Ct., 906, 80 L. Ed. 1288 3

Ohio Bell Telephone Co., vs. Public Utilities Comm.,

301 U.S. 292, 57 Sup. Ct. 724, 81 L. Ed. 1092. 4

Scherling vs. Kilgore,

(Wyo.) 599 P.2d 1352. 2

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To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioners for their reply to the Brief for Respondents state:

Petitioners by their petition for rehearing to the Supreme Court of Wyoming challenged the initial consideration

of factual issues in such court whether by judicial notice or otherwise.

Petitioners did in their Petition for rehearing to the Supreme Court of Wyoming object to the consideration of any facts by that court, judicially noticed or otherwise, when no factual question or evidence was introduced by any party in either the trial court or appellate court nor any opportunity given to refute or controvert such evidence. See Appendix F, pages 15-17, Petition for Writ of Certiorari.

There were no factual issues raised in the trial court. The initial consideration of factual matters in the appellate court was improper. The Wyoming Supreme Court itself has stated that issues not raised before the trial court will not be considered for the first time on appeal. Scherling vs.

Kilgore (Wyo.) 599 P.2d 1352; In The Matter of State Bank Charter Application of the Security Bank, 606 P.2d 296, 300.

Factual knowledge on the issue, expert or otherwise, of the triers of the facts, is not evidence and cannot form the basis in whole or in part of the ultimate judgment. Morgan vs. U.S., 298 U.S. 468, 56 Sup. Ct., 906, 80 L.Ed., 1288.

The courts have considered similar attempts by administrative agencies to consider factual issues not raised at the hearing. The fact that there may be substantial and properly introduced evidence which supports the ruling is immaterial. A contrary conclusion would be tantamount to requiring a hearing in form but not in substance, for the right of hearing would be meaningless if the

tribunal were permitted to base its termination upon information received without the knowledge of the parties. A hearing requires that the party be appraised of the evidence against him so that he may have an opportunity to refute, test and explain it and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced. English vs. City of Long Beach, (Cal.) 217 P.2d 22, 24; Cf. Ohio Bell Telephone Co., vs. Public Utilities Comm., 301 U.S., 292 57 Sup. Ct. 724, 81 L. Ed., 1093.

Due process should be as equally applicable in the judicial setting as in the administrative setting.

WHEREFORE Petitioner prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

ORIGINAL SIGNED BY
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